

United States District Court
for Northern District of Oklahoma
May 30, 1996

dh

ENTERED ON DOCKET

DATE 5/30/96

US Probation
U S Probation Office
3270 US Courthouse
Tulsa, OK 74103

C R I M I N A L M I N U T E S

4:95-cr-00125

USA v. Sims

DOCKET ENTRY

M TE ORDER by Judge Sven Erik Holmes: Pursuant to the Hrg
Min of 3/8/96, pties made announcement that deft entering
into PT diversion; dismissing counts as to party Billy Ray
Sims (1) count(s) 1; PT Diversion, terminating party
Billy Ray Sims, case terminated.

Hon. Sven Erik Holmes, Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 30 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)
 Plaintiff)
 VS)
)
Charles David Coburn)
 Defendant)
)

Case Number: 93-CR-147-001-B

JUDGMENT AND COMMITMENT ORDER ON
REVOCATION OF SUPERVISED RELEASE

Now on this 15th day of May 1996, this matter comes on for show cause hearing concerning allegations that the defendant violated the conditions of supervised release as set out in the Amended Petition on Supervised Release filed on April 26, 1996. The defendant is present in person and represented by counsel, Federal Public Defender Stephen Knorr. The Government is represented by Assistant U.S. Attorney Charles M. McLoughlin, and the United States Probation Office is represented by U.S. Probation Officer Robert E. Boston.

On January 14, 1994, the defendant was heretofore convicted on his plea of guilty to a one count Information which charged him with Bank Fraud, in violation of 18, U.S.C. § 1344(1). On March 22, 1994, the defendant was committed to the custody of the U. S. Bureau Prisons for a term of eight months. In addition, he was ordered to pay a

\$50.00 Special Monetary Assessment, and to complete a three year term of supervised release. As special conditions of supervised release, Coburn was ordered to pay \$3,500 restitution, and to abide by the special financial conditions as enumerated in Miscellaneous Order No. M-128, filed with the Clerk of the Court on March 18, 1992.

On January 31, 1995, Coburn was released from the custody of the U.S. Bureau of Prisons to serve his term of supervised release.

On April 16, 1996, a Petition on Supervised Release was filed alleging that Coburn had violated the conditions of supervised release as follows:

1. Violation of State of Oklahoma Law: Uttering Bogus Checks (misdemeanors).
2. Violation of the special financial condition by entering into various contractual agreements for credit with businesses, without consulting with his probation officer.
3. Filing Written Monthly Supervision Reports with the probation office which contained false information.

On April 26, 1996, an Amended Petition was filed reflecting that, in addition to the above cited violations, Coburn had been charged in Tulsa County District Court with four felony counts of Obtaining Merchandise by Bogus Checks.

Parties stipulated to admission of Exhibits A-Y as attached to the Petition on Supervised Release and those Exhibits were then admitted into evidence.

On this date, the defendant admitted to the Court that the allegations contained in the Amended Petition on Supervised Release filed April 26, 1996, are true. The defendant requested immediate sentencing.

As a result of this hearing, and the defendant's admission that the allegations of violations of supervised release are true, the Court finds that the violations occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court finds that the violations of supervised release constitute Grade B violations, and that the Court is required to revoke supervised release pursuant to Section 7B1.3(a)(1) of the U. S. Sentencing Guidelines Manual published November 1, 1993. Additionally, the Court finds that, pursuant to 18 U. S. C. § 3583(e)(3), since the original offense of conviction was a class C felony, the defendant could not be required to serve more than two years imprisonment. In consideration of these findings and pursuant to U.S. vs. Lee, 957 F2d. 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following was ordered:

The defendant shall be committed to the custody of the U. S. Bureau of Prisons for a term of ten months. Said sentence shall run consecutive to the sentence he is presently serving in the Oklahoma Department of Corrections. The defendant is ordered to pay immediately the outstanding \$500.00 balance on the fine ordered at the original sentencing. There will be no interest charged on the unpaid balance of the fine. The defendant is ordered to pay up to one half of his earnings while in federal custody, or while serving the State of Oklahoma sentences toward liquidating the \$500 fine. The Court recommends that the U.S. Bureau of Prisons place the defendant at the El Reno FCI Camp facility and that a psychological evaluation of the defendant be undertaken by the U.S. Bureau of Prisons. Further, that if such psychological evaluation reveals the need for psychological or other mental health treatment, then the U.S. Bureau of Prisons is urged to provide such treatment while the defendant is in the U.S. Bureau of Prisons' custody.

S/ THOMAS R. BRETT

The Honorable Thomas R. Brett
Chief United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSE HERNANDEZ DELEON,
CESAR MARTINEZ DELEON,
GUADALUPE DELEON, and
ARMANDO SAENZ REGALADO,

Defendants.

ENTERED ON DOCKET
MAY 29 1996
DATE

No. 96-CR-27-K ✓

FILED

MAY 28 1996 *pw*

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Now before this Court is Plaintiff's motion to dismiss the Superseding Indictment against defendants Guadalupe DeLeon and Armando Saenz Regalado. Finding good cause, this Court dismisses without prejudice the Superseding Indictment against defendants Guadalupe DeLeon and Armando Saenz Regalado.

IT IS SO ORDERED THIS 24 DAY OF MAY, 1996.

Terry C. Kern
TERRY C. KERN
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 24 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)
Plaintiff)
VS)
JANELL AKIN)
Defendant)

Case Number: 93-CR-149-002-E

ENTERED ON DOCKET

DATE 5/24/96

ORDER REVOKING SUPERVISED RELEASE

Now on this 16th day of May, 1996, this cause comes on for sentencing concerning allegations that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on February 7, 1996. The defendant is present in person and represented by counsel, Regina Stephenson. The Government is represented by Assistant U.S. Attorney Kevin Leitch, and the United States Probation Office is represented by Dee Ann Bernaud.

The defendant was heretofore convicted on her plea of guilty to a one-count Information charging her with Misapplication Of Financial Institution Funds And Aiding And Abetting, in violation of 18 U.S.C. §§ 656 and 2(a). On January 14, 1994, continued to February 2, 1994, Akin was sentenced to zero (0) months in the custody of the Bureau of Prisons followed by a five (5) year period of supervised release and ordered to pay a special assessment of \$50. In addition to the standard conditions of supervised release, the following special conditions were ordered:

United States District Court
Northern District of Oklahoma

I hereby certify that the foregoing
is a true copy of the original on file
in this court

Phil Lombardi, Clerk

Sam M. Cullough

The defendant shall be placed on home confinement to include electronic monitoring for a period of six (6) months, to commence by January 19, 1994. During this time, the defendant shall remain at her place of residence except for employment and other activities approved in advance by the probation officer. The defendant shall maintain a telephone at her place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Department.

The defendant shall successfully participate in a program of testing and treatment for drug abuse, to include inpatient treatment if deemed necessary, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.


The defendant shall pay restitution in the amount of \$43,524.38.

On February 29, 1996, a Revocation Hearing was held regarding the allegations as memorialized in the Petition on Supervised Release, filed February 7, 1996. The hearing was continued until September 4, 1996, in order for the defendant to successfully complete a substance abuse treatment program. On April 27, 1996, the defendant violated her conditions of supervised release by submitting a urine specimen that tested positive for cocaine. The Revocation Hearing was accelerated to May 16, 1996.

On May 16, 1996, a Revocation Hearing was held regarding the allegations as memorialized in the Petition on Supervised Release, filed on February 7, 1996. Akin stipulated to the violations at the Revocation Hearing and Sentencing immediately followed the hearing. As a result of the Sentencing Hearing, the Court found that the violations occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court finds that the violation of supervised release constitutes a Grade C violation in accordance with U.S.S.G. § 7B1.1(3)(B), and that the defendant's original Criminal History Category of I establishes a revocation imprisonment range of 3-9 months, pursuant to U.S.S.G. § 7B1.4(a). In consideration of these findings and pursuant to U.S. vs. Lee, 957 F2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following was ordered:

The defendant is committed to the custody of the U. S. Bureau of Prisons to be imprisoned for a term of six (6) months. It is recommended that the defendant be placed in an institution offering a substance abuse treatment program.

The defendant was remanded to the custody of the U.S. Marshal's Service pending transfer to an institution.


The Honorable James O. Ellison
Senior United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA ENTERED ON DOCKET

UNITED STATES OF AMERICA,

Plaintiff,

vs.

KANDEE K. MARSHALL,

Defendant.

DATE MAY 24 1996

No. 94-CR-176-BU
(96-CV-250-BU)

FILED

MAY 21 1996

ORDER

Phil Lombardi, Clerk
U.S. DISTRICT COURT

This matter comes before the Court on the motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 of Defendant Kandee K. Marshall. Defendant contends that her conviction for use of a firearm during a drug trafficking crime, 18 U.S.C. § 924(c)(1), should be vacated because she did not use any firearm during the commission of any drug trafficking act. See Bailey v. United States, 116 S.Ct. 501 (1995). The Government agrees that Defendant's motion should be granted.

Accordingly, Defendant's motion to vacate, set aside, or correct sentence is hereby **GRANTED** and Defendant's conviction for use of a firearm during a drug trafficking crime pursuant to 18 U.S.C. § 924(c)(1) is hereby **VACATED**. The judgment is modified to delete from the sentence the sixty months for the 924(c)(1) conviction (Count 3). All other portions of the judgment shall remain in full effect.

SO ORDERED THIS 20 day of May, 1996.


MICHAEL BURRAGE
UNITED STATES DISTRICT JUDGE

93/2

F I L E D

Phil Lombardi, Clerk
U.S. DISTRICT COURT

Defendant.

ENTERED ON DOCKET
DATE MAY 23 1996

On August 2, 1994, Coleman filed a motion pursuant to 28 U.S.C. § 2255, raising several claims of error, and requesting that his sentence be vacated, set aside, or corrected. On April 4, 1995,

this Court entered an order denying Coleman's § 2255 motion. On January 8, 1996, the Tenth Circuit affirmed this Court's denial of Coleman's § 2255 motion as to numerous claims, but reversed and remanded for specific findings regarding Coleman's claims of ineffective assistance of counsel based on, 1) failure to object to a jury instruction, 2) failure to investigate the codefendant's statement, and 3) failure to correctly advise as to the consequences of a proffered plea bargain. The Circuit also reversed and remanded this Court's denial of Coleman's claim regarding false coconspirator testimony for this Court's consideration pending this Court's findings on ineffective assistance. See, U.S. v. Coleman, 1996 WL 3901 (10th Cir.1996). On May 14, 1996, this Court conducted an evidentiary hearing in order to provide Coleman with an opportunity to fully and fairly address these issues.

Upon reviewing the record, evidence, and materials submitted, as well as the testimony given at the May 14 hearing, this Court concludes that Coleman utterly failed to satisfy the rigid standard set out in Strickland v. Washington, 466 U.S. 668 (1984), in his attempt to demonstrate ineffective assistance of counsel. The Supreme Court in Strickland held that a claim of ineffective assistance of counsel has two components. First, Coleman must show that his attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth Amendment." Id. at 687. "The proper standard for attorney performance is that of reasonably effective assistance." Id. Therefore, to succeed, the movant must show that his counsel's performance fell below an objective standard of reasonableness. Second, Coleman must demonstrate that these errors "were so serious as to deprive [Coleman] of a fair trial, a trial whose result is reliable." Id. That is, Coleman must show that "the deficient performance prejudiced the defense." Id. However, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional

assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Id. at 689.

At the May 14 hearing, Coleman's newly appointed counsel raised three primary issues. First, Coleman alleges that his trial counsel, William Hughes, was ineffective in failing to properly impeach the testimony of Johnny Willis, an alleged coconspirator. Coleman claims that Willis gave false testimony with regard to Willis' role in the bank robbery. Second, Coleman alleges that Hughes was ineffective in failing to fully advise him as to plea offers. Third, Coleman alleges that Hughes was ineffective in failing to object to the Court's refusal to give a "mere presence" jury instruction.

At the hearing, Hughes testified that he received three plea offers from the government. Hughes testified that he communicated each offer to Coleman upon receiving them, and that Coleman rejected each offer. Hughes testified that Coleman indicated that, because of his age and health condition, any substantial sentence would essentially be a death sentence. Further, Coleman denied that he went to the bank with the intent to rob it, and he would therefore not plead guilty to robbery. Hughes testified that he fully explained each offer to Coleman, and that Hughes informed Coleman of the probable consequences of accepting each offer. Hughes informed Coleman that he could only estimate the sentence Coleman might receive under each offer. Coleman's response in each instance was that he did not want to plead guilty to anything that might involve substantial imprisonment, and that he did not want to plead guilty to bank robbery.

Brian Turner, Coleman's codefendant who entered a plea of guilty to the bank robbery, also testified at the hearing, although he did not testify at trial. Turner testified that he asked his attorney whether Coleman could get the same deal that had been offered to Turner, i.e., fourteen years imprisonment. Coleman testified that Hughes never gave a figure of less than twenty years in any

offer that Hughes relayed to Coleman. Coleman testified that he would have taken a plea if offered a fourteen year sentence. Coleman thus alleges that Hughes failed to communicate the proper plea offer of less than twenty years to Coleman.

The Court finds that Hughes acted properly with respect to the relaying of the three plea offers to Coleman. Hughes testified that he fully explained each offer to Coleman, and further advised Coleman of the approximate sentence that could be expected. There is absolutely no evidence that Hughes received any plea offer which he either failed to relay or explain to Coleman. Coleman's testimony that he would have taken a fourteen year offer is not persuasive and is somewhat inconsistent. First, there is no evidence that the government conveyed any offer of fourteen years to Hughes, and there is no evidence that Hughes ever had reason to believe that Coleman may receive a fourteen year sentence. Further, all the evidence supports the fact that Hughes properly relayed each offer to Coleman, and informed Coleman as to the meaning and consequences of each offer. The fact that Turner may have received a fourteen year plea offer, and that Turner asked his attorney whether the same could be had for Coleman, is also unpersuasive. Again, there is no evidence that Hughes ever received an offer of fourteen years, or that he failed to communicate and fully explain each offer to Coleman. Hughes' estimation as to a sentence that might be imposed was entirely reasonable, given the violent nature of the crime involved. Moreover, Hughes testified that Coleman indicated that he would refuse any substantial sentence. A fourteen year sentence is certainly substantial. Coleman also informed Hughes that Coleman would not plead guilty to bank robbery. Coleman continues to insist that he did not intend to participate in the bank robbery, and he testified under oath at the hearing that he had no plans or intention to rob a bank. Hence, without such an allocution under oath and in open Court, this Court would never have accepted any

plea offer relating to the bank robbery in any event. Coleman's allegations are therefore inconsistent; 1) he indicated that he would refuse any substantial sentence, yet he claims he would have agreed to a fourteen year sentence, and 2) he remains steadfast in his refusal to admit to bank robbery, yet he claims he would have entered a plea had he been given a fourteen year sentence.

The Court therefore finds that Hughes fully and properly communicated each offer he received to Coleman and, further, Hughes fully explained to Coleman the consequences of accepting such offers. The Court finds no error on Hughes' part in Coleman's refusal to accept the plea offers. Coleman failed to convince the Court that Hughes' conduct with respect to the plea offers was anything less than reasonably effective assistance.

The Court next turns to Hughes' failure to object to the Court's refusal to give a "mere presence" jury instruction.¹ The record shows that on April 21, 1992, Hughes filed Coleman's requested jury instructions. Included in the request was an instruction which read, "Evidence that a defendant is in the presence of other persons who are robbing a bank is of itself insufficient to warrant conviction of that defendant for bank robbery." This particular instruction was not given to the jury, and Coleman alleges that Hughes was ineffective in failing to object with respect to this issue. Hughes testified that his primary defense strategy was to show that Coleman did not possess a gun during the robbery and to show that, although Turner plead guilty to robbery, Coleman is not

¹ With respect to the jury instruction issue, the Court notes that the Circuit reversed and remanded for specific findings with regard to counsel's failure to object to an instruction that purportedly equated "knowledge and presence" with aiding and abetting an offense. At the May 14 hearing, neither Coleman nor his newly appointed counsel raised the issue regarding an aiding and abetting instruction. Rather, Coleman, through his counsel at the May 14 hearing, only raised the issue respecting a "mere presence" jury instruction. The Court has reviewed the jury instructions regarding "aiding and abetting" and finds no error. The Court found no instruction that equates knowledge and presence with aiding and abetting.

Turner. Thus, Hughes testified that he argued to the jury that Turner and Coleman went to the bank and then Turner decided to rob it, unbeknownst to Coleman. Further, Hughes argued that Coleman panicked when he saw the guard's gun, but that Coleman never intended to rob the bank. For this reason, Hughes requested the mere presence instruction. Hughes testified that he does not recall whether he raised an objection to the Court's refusal to give this particular instruction. However, Hughes testified that after hearing all the evidence against Coleman, there was no real factual basis for the giving of a mere presence instruction. Hughes testified that he believed that the Court's instructions were fair, given the evidence presented. Coleman testified that Hughes' failure to insist upon a mere presence instruction deprived Coleman of his only real defense. The evidence presented at trial, however, overwhelmingly demonstrated that Coleman was much more than a mere bystander; the evidence conclusively showed that Coleman actually aided in the commission of the robbery.

Hence, even assuming that Hughes was ineffective for failing to raise an objection as to this issue, the Court finds no prejudice to Coleman. The Court simply would not have given the instruction even if Hughes had raised an objection and insisted that the instruction be given. In its instructions to the jury, the Court set forth the elements of the crime of bank robbery. Within these elements is the element of intent to rob the bank, which the government must prove beyond a reasonable doubt. With these elements in mind, the jury found beyond a reasonable doubt that Coleman committed the crime of bank robbery. Thus, the jury necessarily found that Coleman was not "merely present" when the robbery took place. That is, given that the jury found that Coleman committed all the elements of bank robbery, the jury could not have found mere presence even if the instruction were given. "The charge to the jury in the instant case . . . was 'sufficient, if followed, to

preclude conviction for mere presence or proximity'." U.S. v. Alonso, 790 F.2d 1489, 1497 (10th Cir.1986) (quoting, U.S. v. Rojas, 537 F.2d 216, 220 (5th Cir.1976)).

The Court now examines Coleman's claim that Hughes failed to investigate and properly impeach false testimony. During the trial, Johnny Willis testified that he gave Coleman and Turner a ride to the bank in a white truck, but did not know anything about a robbery. Willis testified that Coleman gave Willis directions while driving. Willis testified at trial that he dropped Turner and Coleman off at a point where Coleman wanted to go. Willis testified that he drove off, turned around, and picked up Turner, who asked to be driven back to Coleman's residence. Willis testified that he later learned of Coleman and Turner's possible connection to a bank robbery by watching the evening news, when he saw photos of the robbery suspects and learned that a white truck was involved in the incident. Willis then proceeded to go to the police with information concerning his role in the robbery. Willis insisted that he knew nothing about any plans to rob a bank.

Hughes testified at the hearing that he interviewed Willis, who informed Hughes that he did not know there would be a robbery and that he thought Coleman would not do such a thing. Hughes testified that Willis informed him that Willis had picked up Turner and Coleman and that Coleman had given Willis driving instructions. Hughes testified that he learned from Willis that Willis stayed near the bank, picked up Turner, and drove him back to Coleman's residence. Willis informed Hughes that Willis did not know of the robbery until he saw it on the news. Hughes testified that, during trial, he did not inquire into whether Willis knew about the robbery because Hughes thought it to be irrelevant. Hughes testified that he believed that since Turner did not testify, Hughes could show that Coleman did not go into the bank with the intent to rob it. Hughes testified that had Turner testified at trial, this theory would have been nullified.

Mary Daniels testified at the May 14 hearing that some time after the trial, Willis informed her that he made some false statements during trial, but she could not recall what the false statements were. Daniels testified that she did not have any conversation with Hughes concerning Willis' false statements. Hence, Daniel's testimony does not establish that anything material was said to her. Furthermore, since Willis disclosed this fact to Daniels *after* trial, Hughes cannot be faulted for failing to discover these false statements before or during trial.

Turner testified at the May 14 hearing that he, Willis, and Coleman discussed robbing a bank the evening prior to the day of the robbery. Turner testified that Willis was asked to provide transportation to the bank. Turner testified that Willis knew the true reason why Coleman and Turner needed a ride on the day of the robbery. Turner testified that he, Willis, and Coleman drove to about three banks in order to find an "easy" bank to rob. Turner testified that Willis committed perjury if Willis testified that he did not know about the robbery prior to its occurrence. Turner testified that he does not recall ever telling the government that Willis was involved in any manner, or that Willis knew of the robbery plans. Turner only implicated Coleman in his discussions with the government.

Coleman testified at the hearing that he was present with Willis and Turner while they were discussing plans for a bank robbery. Coleman testified that he went with Willis and Turner the next day, but Coleman claims he had no intention of robbing a bank. Coleman testified that he never informed Hughes that he was present during robbery discussions with Turner and Willis or that the three men drove around looking for an easy bank to rob. Coleman testified that, contrary to Willis' testimony at trial, Willis knew of and participated in the robbery.

Coleman now argues that Hughes should have impeached Willis at trial. Coleman claims that if Hughes had impeached Willis at trial, there would have been room for doubt concerning Coleman's

involvement in the robbery. If adequately impeached, Coleman claims that the jury would have doubted everything that Willis said while testifying.

However, even assuming that Willis should have been impeached, and Hughes was ineffective for failing to do so, the Court finds no prejudice. Willis' testimony is largely irrelevant. There is overwhelming evidence that implicated Coleman in the robbery aside from Willis' testimony. Further, there is absolutely no evidence that the government suborned perjury by allowing Willis to testify falsely. There is no evidence that either the government or Hughes knew that Willis was lying during his testimony at trial. Coleman himself testified that he never informed Hughes about Willis' true involvement regarding robbery discussions and searching for "easy" banks while driving. Additionally, there is no evidence that Turner told anyone of Willis' true involvement. Hence, the Court finds that neither Hughes nor the government suborned perjury with respect to Willis' testimony. The Court further finds that Coleman would have been convicted even if Willis had been impeached, or even if Willis never testified at all, given the overwhelming evidence against Coleman from other sources.

Although not raised during the hearing, the Circuit also remanded for a determination of whether Hughes was ineffective as a result of entering into a damaging stipulation regarding Turner without investigating statements made by Turner to the government. In order to keep Turner from testifying at trial, the government and Hughes entered into a stipulation that 1) Turner and Coleman were long-time friends, 2) Coleman knew Turner had a lengthy criminal record, 3) Coleman knew that Turner referred to himself as "Billy Black," 4) Turner used this alias during the robbery, and 5) Turner would testify that he did not have a gun during the robbery. Given the testimony of Turner at the May 14 hearing which clearly implicated Coleman both in robbery discussions and the actual

robbery itself, this Court is simply perplexed by Coleman's claim that this stipulation was damaging. It would appear that Hughes engaged in sound trial strategy by doing everything possible to keep Turner off the stand at trial. The stipulation was not damaging, but rather of great assistance to Coleman. There is no evidence that Hughes failed to adequately investigate Turner's statements to the government, nor is there any evidence that the government withheld exculpatory statements from Hughes. On the contrary, given Turner's testimony at the hearing, Turner most definitely implicates Coleman in the robbery. Nothing exculpatory came from Turner during the hearing. Hence, the Court finds that Coleman's claims with respect to this issue are unfounded, and the Court further finds that Hughes rendered extremely effective assistance by persuading the government to enter into a stipulation, thereby keeping Turner off the witness stand.

Having thoroughly reviewed the present case, the Court concludes that, 1) Hughes' performance did not fall below that of reasonably effective assistance, 2) the result of Coleman's trial was entirely reliable, and, consequently, 3) Coleman suffered no prejudice. With respect to Hughes' performance, this Court must indulge a strong presumption that the challenged action might be considered sound trial strategy. Even if such a presumption did not exist, the Court would nevertheless find that Hughes engaged in every ethical effort possible to demonstrate reasonable doubt to the jury, and his trial strategy was sound. Hughes was faced with overwhelming evidence against Coleman, and a verdict of guilt was almost inescapable following the conclusion of the trial. To say that this verdict was in any manner a result of counsel's allegedly deficient performance is somewhat absurd. Rather, the verdict of guilt was a natural result of the abundance of evidence which clearly and unequivocally implicated Coleman in the bank robbery for which he was charged. Hence, even if the Court were to assume that Hughes' advocacy failed in certain respects, Coleman

has completely failed to demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694.

Accordingly, Coleman's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 is hereby DENIED.

IT IS SO ORDERED this 22nd day of May, 1996.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 22 1996

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MELVIN BAILEY,

Defendant.

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 92-CR-66-C

ENTERED ON DOCKET

DATE MAY 23 1996

ORDER

Currently pending before the Court is the motion filed by defendant, Melvin Bailey, seeking a writ of mandamus to compel Assistant U.S. Attorney, Allen Litchfield, to produce discovery materials relating to selective prosecution.

On July 10, 1992, a Four Count Indictment was filed against Bailey. Counts One and Two charge that Bailey distributed cocaine base (crack), in violation of 21 U.S.C. § 841(a)(1). Counts Three and Four charge that Bailey used a communication facility in the commission of a felony, in violation of 21 U.S.C. § 843(b). On November 30, 1992, Bailey plead guilty to Counts One, Two, and Four in open Court, where he admitted the essential elements of the crimes charged. Bailey was sentenced on February 11, 1993, to 75 months imprisonment on Counts One and Two and 48 months imprisonment on Count Four, to run concurrently. Further, five years of supervised release was imposed with respect to Counts One and Two, to run concurrently with three years of supervised release on Count Four. Bailey did not appeal his conviction or sentence.

On April 15, 1996, Bailey filed the present motion seeking a writ a mandamus from this Court to compel the government to release certain enumerated documents and materials, so that Bailey may fashion a selective prosecution claim. Specifically, Bailey seeks information relating to (1) any and

all statistical data regarding the racial and ethnic identity of those persons prosecuted for offenses involving crack cocaine during 1991 to 1995, (2) any and all statistical data regarding the racial and ethnic identity of those persons prosecuted for offenses involving cocaine hydrochloride during 1991 to 1995, (3) any and all statistical data regarding the racial identity of those persons arrested in this District for offenses involving cocaine hydrochloride during 1991 to 1995, (4) any and all data regarding all persons arrested in this District who have not been prosecuted, and (5) any and all data regarding the policies and practices of the U.S. Justice Department, the U.S. Attorney's Office for this District, and all federal law enforcement agencies in this District, concerning the prosecution of individuals for offenses involving cocaine hydrochloride.

The Court notes that this is the first time that Bailey has raised any issue regarding selective prosecution. A review of Bailey's objections to his presentence report reveals that Bailey failed to object on the grounds of selective prosecution. Further, Bailey did not raise the issue of selective prosecution before or during his plea hearing, at sentencing, or on direct appeal. Even though Bailey's present motion simply seeks materials in order to provide him with a basis for the filing a future selective prosecution claim, the Court further notes that any such claim will likely fail on the grounds of waiver. "Fed.R.Crim.P. 12(b)(1) requires a defendant to raise 'objections based on defects in the institution of the prosecution' prior to trial. A selective prosecution claim clearly qualifies as such an objection. . . . [Rule 12(f)] presumes that these objections are waived if they are not raised prior to trial; however, the rule also provides that 'the court for cause shown may grant relief from the waiver.'" U.S. v. Bryant, 5 F.3d 474, 476 (10th Cir.1993). In the present case, Bailey has failed to demonstrate good cause for this Court to grant relief from the waiver. Hence, Bailey's selective prosecution claim has likely been waived and will probably therefore fail in any event.

With respect to the issue regarding the issuance of a writ of mandamus, the Court rejects the request. As the Supreme Court has noted, the “remedy of mandamus is a drastic one, to be invoked only in extraordinary situations.” Kerr v. U.S. District Court for the Northern District of Ca. et al, 426 U.S. 394, 402 (1976). Moreover, “the writ ‘has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.’” Id., quoting Will v. U.S., 389 U.S. 90, 95 (1967). Only “exceptional circumstances amounting to a judicial ‘usurpation of power’ will justify the invocation of this extraordinary remedy.” Id. The issuance of the writ is within the discretion of the court to which the petition is addressed. Id. at 403. Furthermore, the Tenth Circuit in U.S. v. Taylor, 798 F.2d 1337, 1341 (10th Cir.1986), stated that it is a “hoary principle that mandamus cannot be used as a substitute for appeal.” Additionally, writs of mandamus “have been granted only when a trial court has overreached its jurisdictional authority.” Id.

Hence, given the foregoing, the Court finds that Bailey’s requested writ of mandamus is improper.¹ This is clearly not a situation in which Bailey is attempting to “confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.” Kerr, *supra*.

Accordingly, Bailey’s motion seeking a writ of mandamus is hereby DENIED.

¹ Bailey relies heavily on U.S. v. Armstrong, 48 F.3d 1508 (9th Cir.1995), for support of his motion for discovery. However, in Armstrong, the defendants made a discovery request relating to the issue of selective prosecution *prior to* trial. Additionally, the Court notes that Armstrong has recently be reversed and remanded by the Supreme Court in U.S. v. Armstrong, ___ S.Ct. ___, 1996 WL 241682 (1996).

IT IS SO ORDERED this 21st day of May, 1996.

A handwritten signature in cursive script, appearing to read "H. Dale Cook", written over a horizontal line.

H. DALE COOK
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSE HERNANDEZ DELEON,
CESAR MARTINEZ DELEON,
GUADALUPE DELEON aka "Lupita,"
and ARMANDO SAENZ REGALADO,

Defendants.

ENTERED ON DOCKET

DATE MAY 23 1996

Case No. 96-CR-27-K

FILED
MAY 21 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

ORDER

Now on this 21 day of May, 1996, this cause comes on to be heard in the matter of the plaintiff's motion to dismiss the Indictment in the above styled cause against defendants Guadalupe Deleon aka Lupita and defendant Armando Saenz Regaldado. The Court finds that said motion ought to be granted and the Indictment is dismissed without prejudice as to the above-named defendants.

IT IS SO ORDERED.


TERRY C. KERN
United States District Court Judge

FILED

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

MAY 22 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 95-CR-101-001-C

GERALD A. SNIDER
 Defendant.

ENTERED ON DOCKET

DATE 5/22/96

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

The defendant, GERALD A. SNIDER, was represented by Roger Hilfiger.

The defendant was found guilty on count(s) 1 of the Indictment on December 1, 1995 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 371	Conspiracy to Commit Medicare Fraud	09/27/92	1

As pronounced on May 14, 1996, the defendant is sentenced as provided in pages 2 through 5 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 21st day of May, 1996.


 The Honorable H. Dale Cook
 United States District Judge

Defendant's SSN: 444-42-9855

Defendant's Date of Birth: 09/22/43

Defendant's residence and mailing address: 3505 Porter Ave., Muskogee, OK 74403

United States District Court)
 Northern District of Oklahoma) SS
 I hereby certify that the foregoing
 is a true copy of the original on file
 in this court.
 Phil Lombardi, Clerk

By 
 Deputy

Defendant: GERALD A. SNIDER

Case Number: 95-CR-101-001-C

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 12 months and 1 day.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 9:00 a.m. on July 22, 1996.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: GERALD A. SNIDER

Case Number: 95-CR-101-001-C

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: GERALD A. SNIDER
Case Number: 95-CR-101-001-C

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$190,000. Defendant James O. Moore, in related case 94-CR-037-001-B, was ordered to pay the remainder of the total amount of restitution ordered.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
DHHS/HFCA, Division of Accounting P.O. Box 17255 Baltimore, MD 21203-7255	\$190,000.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: GERALD A. SNIDER
Case Number: 95-CR-101-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	13
Criminal History Category:	I
Imprisonment Range:	12 months to 18 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 3,000 to \$ 483,904
Restitution:	\$ 241,952

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

RAM

EO 5-21-96

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 95-CR-054-002-K ✓

JAMES T. KALYVAS
Defendant.

JUDGMENT OF ACQUITTAL

FILED
MAY 21 1996
Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, JAMES T. KALYVAS, was represented by Keith Ward.

The defendant has been found not guilty on count(s) 1 through 4 of the Indictment on December 18, 1995 and is discharged as to such count(s). IT IS ORDERED that the Defendant is acquitted and discharged, and any bond is exonerated.

Signed this the 20 day of May, 1996.



United States District Judge

Defendant's SSN: 200-34-2958

Defendant's Date of Birth: 12/24/46

Defendant's residence and mailing address: 4000 Kingston Terrace, Sarasota, Florida 34238

EOT 5-21-96

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 95-CR-054-002-K✓

JAMES T. KALYVAS
 Defendant.

FILED

MAY 21 1996

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

The defendant, JAMES T. KALYVAS, was represented by Keith Ward.

On December 18, 1995, the defendant was acquitted in count(s) 1 through 4 of the Indictment.

The defendant was found guilty on count(s) 5 of the Indictment on December 18, 1995 after a plea of not guilty. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1343, and 2(b)	Wire Fraud and Causing a Criminal Act	12/01/93	5

As pronounced on May 7, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00 , for count(s) 5 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 20 day of May, 1996.


 The Honorable Terry C. Kern
 United States District Judge

Defendant's SSN: 200-34-2958

Defendant's Date of Birth: 12/24/46

Defendant's residence and mailing address: 4000 Kingston Terrace, Sarasota, Florida 34238

Defendant: JAMES T. KALYVAS

Case Number: 95-CR-054-002-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 18 months.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 12:00 p.m. on August 7, 1996.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: JAMES T. KALYVAS
Case Number: 95-CR-054-002-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 3 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
5. You are prohibited from engaging in any form of employment which would give you access to bank accounts, securities, or other negotiable assets of any individual, business, or other entity. All employment shall be approved in advance by the U.S. Probation Officer. Further, you shall advise any and all employers of all past criminal convictions.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JAMES T. KALYVAS
Case Number: 95-CR-054-002-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$15,000 on Count 5 of the Indictment.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
All Steel Building Company Attn: Ron Kirkpatrick 1918 Southwest Blvd Tulsa, OK 74107	\$15,000.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: JAMES T. KALYVAS

Case Number: 95-CR-054-002-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report except:

ATTACHMENT A: Factual findings of U.S. District Judge Terry C. Kern in the matter of the sentencing of James T. Kalyvas, 95-CR-054-002-K, on May 7, 1996. The presentence report is amended as follows:

Paragraph 5 should contain the term "advance payment scheme" rather than "advance fee scheme."

Paragraph 8 should reflect the fact that attorneys for Oklahoma Feldspar negotiated away the formal escrow requirement regarding the advance payment sent to Kalyvas and Dass.

Paragraph 13 should reflect that Kalyvas had no obligation to provide the bond being sought by Oklahoma Feldspar.

Paragraph 15 should state that Kalyvas was not involved in the initial negotiations or agreements between Michael Gianott and Mulk Raj Dass.

Paragraph 16 should note that Kalyvas had no obligation under the contract entered into between Michael Gianott and Mulk Raj Dass.

Paragraph 20 should reflect the fact that of the \$90,300 loss incurred by Frank Carr pursuant to this scheme, only \$59,400 is attributable to Kalyvas. The remaining \$30,900 was sent directly to Dass without Kalyvas' knowledge.

Paragraph 27 should reflect that Mike Sarkar induced Axel Wiederkind to send \$140,000 to Kalyvas' attorney trust account, and that Kalyvas should not be held accountable for Wiederkind's subsequent loss of that amount.

Paragraph 28 should reflect that the total loss attributable to Kalyvas as a result of his involvement in the scheme to defraud is \$321,900; \$75,000 from the Oklahoma Feldspar scheme, \$59,400 from the Frank Carr scheme, and \$187,500 from the Robert Kohn scheme.

Paragraph 33 should reflect that the loss of \$321,900 results in an eight level increase pursuant to USSG §2F1.1(b)(1)(I).

Paragraph 36 should reflect that a two level decrease is applicable for Kalyvas' role as a "minor participant" in the offense.

Paragraphs 40 and 42 should reflect the fact that the Total Offense Level is 14.

Paragraph 57 should reflect the fact that an offense level of 14 and criminal history category of I results in a guideline imprisonment range of 15 to 21 months.

Paragraph 64 should reflect the fact that the guideline fine range is \$4,000 to \$40,000.

Paragraph 66 should reflect the fact that the restitution amount owed is \$75,000.

Defendant: JAMES T. KALYVAS

Case Number: 95-CR-054-002-K

Guideline Range Determined by the Court:

Total Offense Level:	14
Criminal History Category:	I
Imprisonment Range:	15 months to 21 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$4,000 to \$ 40,000
Restitution:	\$ 75,000

The fine is waived or is below the guideline range because of the defendant's inability to pay.

Full restitution is not ordered for the following reason(s): Because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

MAY 21 1996

UNITED STATES OF AMERICA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.

Case Number 96-CR-004-001-B

JAMEY LEE NOBLE
Defendant.ENTERED ON DOCKET
MAY 21 1996
DATE _____

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, JAMEY LEE NOBLE, was represented by Rick Faling.

On motion of the United States the court has dismissed count(s) 1 through 3 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Information on February 9, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

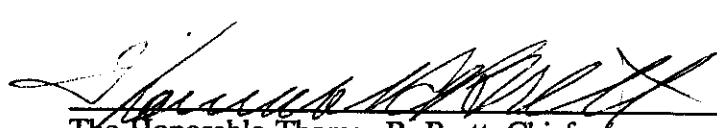
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 201(c)(1)(B)	Acceptance of a Gratuity by a Public Official	03/06/94	1

As pronounced on May 17, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 21st day of May, 1996.


The Honorable Thomas R. Brett, Chief
United States District Judge


Defendant's SSN: 513-42-5290

Defendant's Date of Birth: 10/03/42

Defendant's mailing address: 501 Stadium Drive, Apt. C, Ada, OK 74820

United States District Court)
Northern District of Oklahoma) SSI hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombardi, Clerk

By 
Deputy

Defendant: JAMEY LEE NOBLE
Case Number: 96-CR-004-001-B

PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JAMEY LEE NOBLE
Case Number: 96-CR-004-001-B

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 3,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JAMEY LEE NOBLE
Case Number: 96-CR-004-001-B

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	8
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	1 year
Fine Range:	\$ 1,000 to \$ 10,000
Restitution:	\$ N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

ljm

~~FILED~~

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

MAY 21 1996

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 96-CR-008-001-C

ENTERED ON DOCKET

DATE 5/21/96

LISA MICHELLE DeMOSS
 Defendant.

JUDGMENT IN A CRIMINAL CASE
 (For Offenses Committed On or After November 1, 1987)

The defendant, LISA MICHELLE DeMOSS, was represented by John M. Eagleton.

The defendant pleaded guilty to count(s) 1 of the Information on March 7, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 2113(b)	Bank Theft	10/31/95	1

As pronounced on May 14, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 17th day of May, 1996.


 The Honorable H. Dale Cook
 United States District Judge

Defendant's SSN: 447-84-5642

Defendant's Date of Birth: 03/11/71

Defendant's residence and mailing address: 916 South Independence, Sapulpa, OK 74066

United States District Court)
 Northern District of Oklahoma) SS

I hereby certify that the foregoing
 is a true copy of the original on file
 in this court.

Phil Lombardi, Clerk

By 
 Deputy

Defendant: LISA MICHELLE DeMOSS
Case Number: 96-CR-008-001-C

PROBATION

The defendant is hereby placed on probation for a term of 5 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: LISA MICHELLE DeMOSS

Case Number: 96-CR-008-001-C

RESTITUTION AND FORFEITURE**RESTITUTION**

The defendant shall make restitution in the total amount of \$7,350.00.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Local America Bank, F.S.B. Attn: Lee Bowers, Vice President and Regional Manager 2250 East 73rd Street Tulsa, Oklahoma 74136	\$7,350.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: LISA MICHELLE DeMOSS
Case Number: 96-CR-008-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	8
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 1,000 to \$ 10,000
Restitution:	\$ 7,350.00

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

CR

EOD: 5-21-96

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 96-CR-041-001-K ✓

RICHARD B. HICKS
 Defendant.

FILED

MAY 21 1996

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

Phil Lombardi, Clerk
 U.S. DISTRICT COURT

The defendant, RICHARD B. HICKS, was represented by Steve Knorr.

On motion of the United States the court has dismissed count(s) 2-8 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Indictment on May 13, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1344(1)	Bank Fraud	08/24/94	1

As pronounced on May 13, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 20 day of May, 1996.


 The Honorable Terry C. Kern
 United States District Judge

Defendant's SSN: 415-68-3308

Defendant's Date of Birth: 12/13/44

Defendant's residence and mailing address: 4323 S. Lakewood, Tulsa, OK 74135

Defendant: RICHARD B. HICKS
Case Number: 96-CR-041-001-K

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 1 month. Said term shall run concurrently with defendant's imprisonment under Eastern Wisconsin case 94-CR-122-001.

The defendant is remanded to the custody of the United States Marshal.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: RICHARD B. HICKS
Case Number: 96-CR-041-001-K

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.
5. You shall reside for a period of three (3) months, to commence immediately following your release from imprisonment, in the Freedom Ranch Halfway House in Tulsa, Oklahoma, and shall observe the rules of the facility.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: RICHARD B. HICKS
Case Number: 96-CR-041-001-K

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$14,822.95 on Count 1 of the Indictment.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Bank IV 545 S. Boulder Tulsa, OK 74101	\$14,822.95

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: RICHARD B. HICKS
Case Number: 96-CR-041-001-K

STATEMENT OF REASONS

The Court found that it had sufficient information with which to impose sentence without the preparation of a Presentence Investigation Report.

Guideline Range Determined by the Court:

Total Offense Level:	9
Criminal History Category:	I
Imprisonment Range:	4 months to 10 months - Ct. 1
Supervised Release Range:	3 to 5 years - Ct. 1
Fine Range:	\$ 1,000 to \$ 1,000,000 - Ct. 1
Restitution:	\$ 14,822.95

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

lgr

IN THE UNITED STATES DISTRICT COURT FOR THE **F I L E D**
NORTHERN DISTRICT OF OKLAHOMA

MAY 17 1996

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

ANTHONY MARQUEZ,)

Defendant.)

Phil Lombardi, Clerk
U.S. DISTRICT COURT

No. 95-CR-45-C

ENTERED ON DOCKET
MAY 17 1996
DATE _____

ORDER

Currently pending before the Court is the motion filed by defendant, Anthony Marquez, seeking to vacate his sentence, pursuant to 28 U.S.C. § 2255.

On April 4, 1995, Marquez was indicted for knowingly and intentionally possessing with intent to distribute methamphetamine, in violation of 21 U.S.C. § 841(a)(1). On June 6, 1995, Marquez entered a plea of guilty. In entering his plea of guilty, Marquez admitted to the Court that he flew from California to Tulsa on March 18, 1995, and that he was carrying methamphetamine in his luggage with intent to distribute. Marquez was sentenced on July 24, 1995, to 188 months imprisonment and four years of supervised release. Marquez was further ordered to pay a \$3,000 fine.

The Court arrived at the above sentence upon reviewing Marquez's presentence report ("PSR"), as prepared by the U.S. Probation Office. The PSR indicates that the total amount of methamphetamine involved in this case was 1,404.6 grams of a mixture or 1,362.5 grams of methamphetamine (actual). Pursuant to the 1994 Sentencing Guidelines Manual, a base offense level of 36 was assigned, in accord with § 2D1.1(c)(2). Pursuant to § 2D1.1(c), the weight of the 1,362.5 grams of methamphetamine (actual) was utilized in determining the offense level, since this provided

for the greater offense level. An adjustment of three points was assigned for acceptance of responsibility, and Marquez's total offense level was 33, with a Criminal History Category of IV. Pursuant to the sentencing table, the guideline range for imprisonment under such factors is 188 to 235 months. The Court notes that Marquez did not appeal either his conviction or sentence.

Marquez moves this Court to vacate, set aside, or correct the sentence imposed upon him on the following grounds: (1) ineffective assistance of counsel which resulted in Marquez being penalized under the more severe guideline associated with D-methamphetamine, (2) the government failed to prove by a preponderance of the evidence that D-methamphetamine was involved in this case rather than L-methamphetamine, and (3) Marquez's sentence should have been calculated under the more lenient L-methamphetamine guideline.

The government concedes that two different types of methamphetamine exist which carry different guideline levels, with D-methamphetamine resulting in a more severe sentence. The Court notes that the "government has the burden of proof and production during the sentencing hearing to establish the amounts and types of controlled substances related to the offense. Because the type of methamphetamine is not an element of the crime, it need only be proved by a preponderance of the evidence at sentencing." U.S. v. Deninno, 29 F.3d 572, 580 (10th Cir.1994), cert. denied, 115 S.Ct. 1117 (1995). The Court further notes that the government did not attempt to prove by a preponderance of the evidence that D-methamphetamine was involved during sentencing. The government states in its response to Marquez's motion that had his counsel "raised this issue in a formal objection to the presentence report at sentencing, the government would have introduced proof to show that . . . the methamphetamine type was 'D'."

However, even if the government erred in failing to prove the type of methamphetamine at sentencing, this issue has likely been waived by failing to object to the PSR or the sentence imposed, and by failing to raise the issue on direct appeal. It is undisputed that Marquez is now alleging a factual inaccuracy in his PSR, by asserting that the PSR incorrectly attributed type D-methamphetamine to him. "Although the burden of proof is on the government, the burden of alleging factual inaccuracies of the presentence report is on the defendant. . . . Failure to object to a fact in a presentence report, or failure to object at the hearing, acts as an admission of fact." Deninno, 29 F.3d at 580. Furthermore, "§ 2255 is not available to test the legality of matters which should have been raised on appeal." U.S. v. Walling, 982 F.2d 447, 448 (10th Cir.1992). A failure to raise an issue on direct appeal acts as a bar to raising the issue in a § 2255 motion, unless Marquez can show cause and actual prejudice, or can show that a fundamental miscarriage of justice will result if his claim is not addressed. U.S. v. Allen, 16 F.3d 377, 378 (10th Cir.1994). This procedural bar applies to collateral attacks on a defendant's sentence, as well as his conviction. Id. Since the government raised this procedural bar in the instant case, this Court must enforce it and hold Marquez's claims barred unless cause and prejudice or a miscarriage of justice is shown. Id. See also, U.S. v. Saucedo, 950 F.2d 1508 (10th Cir.1991), cert. denied, 507 U.S. 942 (1993) (defendant's failure to object at sentencing to an entirely factual issue acts as a waiver of that issue).

Furthermore, Local Criminal Rule 32.1(D) requires that the PSR must be disclosed to the defendant and his counsel for their inspection prior to sentencing. If any objections are to be made, they must be written and submitted to the probation officer. Absent an objection to the PSR, the PSR is accepted by the Court as accurate. Since neither the defendant nor his counsel objected to the type of methamphetamine reported in the PSR, it was deemed admitted. Thus, the government need not

prove something which is already accepted as true. Additionally, the Court personally addressed Marquez and his counsel during sentencing and asked whether the PSR was accurate and correct. Upon receiving no objection from either Marquez or his counsel to the type of methamphetamine involved, the Court adopted the PSR. Hence, there was no purpose for the government to prove something that was clearly admitted.

In order to evade the above-mentioned procedural bar, Marquez relies upon the well-established exception of ineffective assistance of counsel. "A defendant may establish cause for procedural default by showing he received ineffective assistance of counsel." U.S. v. Cox, 1996 WL 223604 (10th Cir.1996). Marquez alleges that his counsel failed to inform him of any distinction between the two types of methamphetamine. He further alleges that counsel was ineffective in failing to object to the PSR and the sentence imposed upon him. That is, Marquez argues that his counsel was ineffective for failing to force the government to establish, during sentencing, the type of methamphetamine involved in this case. Marquez alleges that his counsel was not aware of the distinction between the different types of methamphetamine, and that Marquez was consequently prejudiced by counsel's failure to raise this issue during sentencing. Marquez maintains that had his counsel raised this issue during sentencing, the government would have been required to prove that D-methamphetamine was involved, and, absent such proof, Marquez would have been sentenced under the less severe guideline associated with L-methamphetamine violations.

The Court, however, is not convinced that Marquez satisfied the rigid standard contained in Strickland v. Washington, 466 U.S. 668 (1984). The Supreme Court in Strickland held that a claim of ineffective assistance of counsel has two components. First, Marquez must show that his attorney "made errors so serious that counsel was not functioning as the 'counsel' guaranteed . . . by the Sixth

Amendment.” Id. at 687. Furthermore, Marquez must show that “the deficient performance prejudiced the defense.” Id. However, “a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance . . .” Id. at 689. Even if the Court were to agree with Marquez that his attorney failed to provide the reasonable and professional assistance guaranteed by the Constitution during the sentencing phase of his case, the Court nevertheless finds that Marquez failed to show that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Id. at 694. That is, the Court finds that Marquez was not prejudiced by the government’s failure to prove at sentencing the type of methamphetamine involved in the present case.

The Court notes that Marquez does not allege that he possessed L-methamphetamine rather than D-methamphetamine. He simply alleges that his counsel erred in failing to force the government to carry its burden of proof as to this issue during sentencing. Marquez claims that “specialized testing” is required to be performed in order to determine the type of methamphetamine in any given case. Marquez claims that the government did not perform any of these required tests.

However, in its response to Marquez’s § 2255 motion, the government submitted to the Court a “Report of Drug Property Collected, Purchased or Seized.” The report contains a laboratory report which shows that the type of methamphetamine seized from Marquez was D-methamphetamine, with a purity of 97%, and weighing 1,362 grams. The report further demonstrates that a Forensic Chemist completed the analysis of the methamphetamine on May 2, 1995, and the report was approved by the Laboratory Director in Dallas, Texas.

Moreover, in a letter written to Marquez on February 16, 1996, from Regina Stephenson, Marquez’s counsel during sentencing, Stephenson states that she is aware of the difference between

"D" and "L" methamphetamine. In the letter, Stephenson also indicates that she contacted assistant U.S. Attorney, James Swartz, in December of 1995, and that Swartz indicated that the type of methamphetamine tested in Marquez's case was found to be D-methamphetamine.

Additionally, the government represents to the Court that the above-mentioned laboratory report was furnished to defense counsel prior to any plea being entered. The PSR prepared in the case also reveals that Marquez's sentence was to be based on the more severe penalty attributed to D-methamphetamine. Hence, it is apparent that both Marquez and his attorney knew of the distinction between the two types of methamphetamine, and the different penalties associated with them. However, neither Marquez nor his attorney chose to object to the laboratory report, the PSR or the sentence based upon the type of methamphetamine involved. As noted in Strickland, there is a strong presumption that Stephenson's failure to object to the type of methamphetamine involved falls within the wide range of reasonable professional assistance.

Even if the Court found that Stephenson's failure to raise the issue regarding the type of methamphetamine involved in the present case fell below the standard of reasonable assistance, the Court nevertheless finds that Marquez was not thereby prejudiced. The government states that had a formal objection been made at sentencing, the government would have introduced the chemist report in order to prove the type of methamphetamine involved. The Court finds that the laboratory report shows, by a preponderance of the evidence, that Marquez possessed 1,362 grams of type D-methamphetamine. Hence, even if an objection had been made, the result in this case would have been the same. Marquez has therefore failed to demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694.

The instant case is quite similar to U.S. v. Torres, 1996 WL 187518 (10th Cir.1996). In Torres, defendant's counsel failed to object to a sentence based on D-methamphetamine. At sentencing, there was no discussion nor any evidence introduced regarding whether the methamphetamine involved was type "D" or "L". The Circuit Court stated that even if defense counsel's performance in failing to object was constitutionally deficient, the defendant's claims must fail because he did not show actual prejudice. The Circuit noted that the "Report of Drug Property Collected, Purchased or Seized" revealed that 35% D-methamphetamine was seized from the defendant in that case. "Therefore, even assuming that counsel had an obligation to raise the issue, the evidence demonstrates that Torres' sentence would have been the same and his sentence is neither 'fundamentally unfair' nor 'unreliable.'" Id.


Because of the striking similarity between Torres and the present case, the Torres rational is certainly applicable here. Marquez's counsel failed to require the government to prove the type of methamphetamine during sentencing. The issue was not raised at sentencing. Marquez was sentenced pursuant to the D-methamphetamine guideline. Marquez failed to object to the PSR or his sentence based on the type of methamphetamine involved. Marquez further failed to appeal his sentence. In response to Marquez's § 2255 motion, the government introduced the laboratory report attributing type D-methamphetamine to Marquez. Hence, even assuming his counsel failed in her duties as a reasonable advocate, the evidence shows that Marquez has not demonstrated actual prejudice because his sentence would have been the same had his counsel raised the issue.

Marquez requests a hearing on this matter. Section 2255 provides that unless the motion and records conclusively show that Marquez is entitled to no relief, the Court shall grant a hearing. In the present case, the Court concludes that the record conclusively shows that Marquez is entitled to

no relief, and a hearing would simply be superfluous. Hence, Marquez's request for a hearing is denied.

Accordingly, Marquez's motion to vacate his sentence pursuant to 28 U.S.C. § 2255 is hereby DENIED.

IT IS SO ORDERED this 17th day of May, 1996.


H. DALE COOK
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 15 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,)

Plaintiff,)

vs.)

JERRY DALE CRINER,)

Defendant.)

No. 95-CV-1148-E
94-CR-163-E

ENTERED ON DOCKET

DATE MAY 16 1996

ORDER

Before the Court is Defendant's pro se motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. The Government has objected. As more fully set out below, the Court finds Defendant's claims procedurally barred.

I. BACKGROUND

On February 3, 1995, pursuant to a plea agreement, Defendant pled guilty to structuring financial transactions in violation of 31 U.S.C. § 5324, and aiding and abetting in violation of 18 U.S.C. § 2. As an additional term of the plea agreement, Defendant agreed to forfeit funds or property with a value of \$120,000.00 to the United States. Defendant acknowledged that these funds represented proceeds of unlawful activity described in the indictment. As a result of this plea agreement, the United States dismissed the remaining Counts of the indictment.

On June 23, 1995, this Court sentenced the Defendant to one year and one day in the custody of the Attorney General, imposed a three-year term of supervised release, and required him to pay a

small fine. Defendant did not file a direct appeal.

On November 17, 1995, Defendant filed the instant motion pursuant to section 2255. He alleges (1) the imposition of a sentence and forfeiture constituted a violation of the Double Jeopardy Clause; (2) the fine and forfeiture were excessive, constituted double jeopardy, and amounted to cruel and unusual punishment; (3) the Court lacked subject matter jurisdiction to impose the sentence after the Defendant issued an initial payment of \$15,000 toward the agreed forfeiture; (4) the imposition of a four-year term of supervised release exceeded and conflicted with the applicable statutes and guidelines; and (5) the United States failed to establish proof of a conspiratorial agreement.

II. ANALYSIS

"Section 2255 motions are not available to test the legality of matters which should have been raised on direct appeal." United States v. Warner, 23 F.3d 287, 291 (10th Cir. 1994) (citation omitted). Rather, "a defendant is procedurally barred from presenting any claim in a section 2255 petition that he failed to raise on direct appeal unless he can demonstrate cause for his procedural default and prejudice suffered thereby, or that failure to hear his claim would result in a fundamental miscarriage of justice." United States v. Wright, 43 F.3d 491, 496 (10th Cir. 1994) (citation omitted). Defendant has not shown cause and prejudice for failing to pursue a direct appeal or that a fundamental miscarriage of justice would result if this Court

declined to hear these allegations. Therefore, the Court finds the claims procedurally barred. In the alternative, the Court finds Defendant's grounds for collateral relief meritless.

A. The Sentence and Forfeiture

In his first ground, Defendant contends the imposition of a term of imprisonment, in addition to a fine and forfeiture, constitutes multiple punishment in violation of the Double Jeopardy Clause. See United States v. Cordoba, 71 F.3d 1543 (10th Cir. 1995). At the outset the Court notes that Defendant's sentence and forfeiture do not constitute multiple punishment in violation of the Double Jeopardy Clause. The sentencing range and forfeiture were agreed to in the same plea agreement and thus "constitute a single punishment for defendant's offenses." United States v. Singleton, 897 F. Supp 1268 (N.D. Cal. 1995). Even assuming Defendant suffered multiple punishment, his consent to the imposition of the sentence and forfeiture in the plea agreement "effectively waived any objection he might have based upon the Double Jeopardy Clause's prohibition against multiple punishments." Cordoba, 71 F.3d at 1545. It is well established that "double jeopardy rights may be waived by agreement, even where double jeopardy was not specifically referred to by name in the plea agreement when the substance of the agreement is to allow for double prosecution." Id.

B. The Fine and Forfeiture

In his second ground, Defendant claims his forfeiture was excessive because it exceeded the fine allowable under U.S.S.G. §

5B1.1(a) and thus constituted cruel and unusual punishment. Additionally, he claims the initial \$15,000 payment constituted a separate fine from the subsequent forfeiture of \$105,000 and thus violated the Double Jeopardy Clause. In his third ground, Defendant contends that the initial payment foreclosed this Court from imposing the sentence term and barred the Government from collecting the balance of the agreed upon forfeiture.

The Government contends the fine imposed was not excessive because it fell within statutory and guideline ranges. This Court agrees. Upon pleading guilty, Defendant was subject to a fine of up to \$250,000. See 18 U.S.C. 3571 (b)(3). Moreover, rather than a fine, these funds constituted a forfeiture, pursuant to 18 U.S.C. § 982, which Defendant had agreed to forfeit in his plea agreement.

To the extent Defendant's claims are grounded on double jeopardy arguments addressed above, his request for collateral relief is hereby denied.

C. Supervised Release

In his fourth ground, Defendant claims that his term of supervised release (a) exceeds the three year maximum range under 18 U.S.C. § 3583(b)(2); (b) involves conditions that are not rationally related to Defendant's offense; and (c) is in conflict with U.S.S.G. § 5B1.1(a).

Defendant incorrectly states that he was sentenced to a four-year term of supervised release. The Judgment reveals that the Court only sentenced him to three years of supervised release. Moreover, as Defendant points out, three years is the maximum term

of supervised release authorized under 18 U.S.C. § 3583(b)(2).

Defendant further claims that he should not be subject to supervised release altogether because § 3583 conflicts with §5B1.1(a) of the Sentencing Guidelines. Essentially, Defendant reasons that probation and supervised release are both forms of custody, and if he is not subject to probation under § 5B1.1(a), it is improper for him to be subject to supervised release. This Court is not persuaded. Moreover, this Court is not inclined to alter the provisions of his supervised release calling for drug testing and search of his residence. 18 U.S.C. §§ 3583 (d) and 3563(a)(4).


D. Conspiratorial Agreement

In his last ground, Defendant contends the Government failed to establish he was involved in a conspiratorial agreement. This claim is patently frivolous. Defendant was not convicted of an offense which contained conspiratorial agreement as an element. See 31 U.S.C. § 5324; 18 U.S.C. §2. Moreover, because Defendant pled guilty, the Government was not required to prove the elements of any of his offenses.

III. CONCLUSION

Accordingly, Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is hereby **denied**.

SO ORDERED THIS 14th day of May, 1996.



JAMES O. ELLISON, Senior Judge
UNITED STATES DISTRICT COURT

CW

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

MAY 13 1996

UNITED STATES OF AMERICA

Phil Lombardi, Clerk
U.S. DISTRICT COURT

v.

Case Number 95-CR-144-001-C

JAMES LEE THOMPSON
 Defendant.

ENTERED ON DOCKET

DATE 5/15/96

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, JAMES LEE THOMPSON, was represented by M. Allen Core.

On motion of the United States the court has dismissed count(s) 1, 2, and 4 of the Information.

The defendant pleaded guilty to count(s) 3 of the Information on January 18, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 201(b)(2)	Official Corruption	02/19/93	3

As pronounced on May 7, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 3 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 13 day of May, 1996.


 The Honorable H. Dale Cook
 United States District Judge

Defendant's SSN: 515-34-5552


Defendant's Date of Birth: 09/28/37

Defendant's residence and mailing address: 811 7th St., Pawnee, Oklahoma 74058

United States District Court)
 Northern District of Oklahoma) SS

I hereby certify that the foregoing
 is a true copy of the original on file
 in this court.

Phil Lombardi, Clerk

By 
 Deputy

Defendant: JAMES LEE THOMPSON

Case Number: 95-CR-144-001-C

PROBATION

The defendant is hereby placed on probation for a term of 5 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 6 months, to commence within 5 days of sentencing date. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office. The entire cost of this program shall be paid by the defendant.
4. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: JAMES LEE THOMPSON

Case Number: 95-CR-144-001-C

FINE

The defendant shall pay a fine of \$ 2,000.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: JAMES LEE THOMPSON

Case Number: 95-CR-144-001-C

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	10
Criminal History Category:	I
Imprisonment Range:	6 months to 12 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 2,000 to \$ 20,000
Restitution:	\$ N/A

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

UNITED STATES OF AMERICA

v.

Case Number 95-CR-132-001-K ✓

NASIR RANA
Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

FILED

MAY 14 1996 ✓

Phil Lombardi, Clerk
U.S. DISTRICT COURT

The defendant, NASIR RANA, was represented by Everett Bennett.

On motion of the United States the court has dismissed count(s) 2 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Indictment on January 16, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
7 USC 2024(b)	Unauthorized Acquisition and Possession of Food Stamps	03/31/95	1

As pronounced on May 8, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 13 day of May, 1996.


The Honorable Terry S. Kern
United States District Judge

Defendant's SSN: 313-98-3010

Defendant's Date of Birth: 05/04/66

Defendant's residence and mailing address: 4828 S. Darlington, Tulsa, OK 74135

Defendant: NASIR RANA
Case Number: 95-CR-132-001-K

PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. While on probation the defendant shall not commit another federal, state, or local crime. You are prohibited, during the period of probation, or afterward, from possessing a firearm or other dangerous devices, unless you have received express written permission of the appropriate federal and state agencies. Further, while on probation you shall not illegally possess a controlled substance. In addition, you shall comply with the standard conditions that have been adopted by this court, and shall comply with the following additional conditions:
4. The defendant shall comply with the rules and regulations of the INS and follow all orders and directives concerning deportation or deportation hearings. If deported from this country, either voluntarily or involuntarily, the defendant shall not reenter the United States illegally. Upon any re-entry into the United States during the period of Court-ordered supervision, the defendant shall report to the nearest U.S. Probation Office within 72 hours.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: NASIR RANA
Case Number: 95-CR-132-001-K

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 1,500.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: NASIR RANA
Case Number: 95-CR-132-001-K

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	6
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500 to \$ 5,000
Restitution:	\$ N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

FILED

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

MAY 14 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA

v.

Case Number 95-CR-128-001-B

KRISTI DENESHA BARNETT
 Defendant.

ENTERED ON DOCKET

DATE MAY 14 1996

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, KRISTI DENESHA BARNETT, was represented by Regina Stephenson.

On motion of the United States the court has dismissed count(s) 5 and 6 of the Indictment.

The defendant pleaded guilty to count(s) 1 through 4 of the Indictment on January 3, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

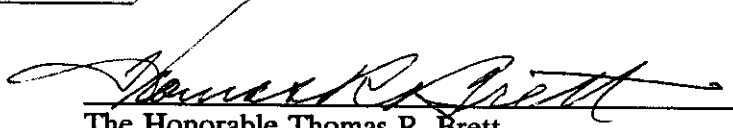
<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1014	False Statement to a Financial Institution	08/24/94	1
42 USC 408(a)(7)(B)	Use of False Social Security Number	08/24/94	2
18 USC 1702	Obstruction of Correspondence	10/01/94	3
18 USC 1029(a)(2)	Unauthorized Use of an Access Device	12/09/94	4

As pronounced on May 9, 1996, the defendant is sentenced as provided in pages 2 through 5 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 200.00, for count(s) 1 through 4 of the Indictment, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 14th day of May, 1996.


 The Honorable Thomas R. Brett
 United States District Judge

Defendant's SSN: 446-66-4573


Defendant's Date of Birth: 12/30/73

Defendant's residence and mailing address: 120 North Johannes, Sapulpa, OK 74067

United States District Court)
 Northern District of Oklahoma) SS

I hereby certify that the foregoing
 is a true copy of the original on file
 in this court.

Phil Lombardi, Clerk

By 
 Deputy

Defendant: KRISTI DENESHA BARNETT
Case Number: 95-CR-128-001-B

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of 2 months as to each of Counts 1 through 4, all counts to run concurrently, each with the other.

The Court makes the following recommendations to the Bureau of Prisons: That the defendant serve her term at the Freedom Ranch Community Confinement Center in Turley, Oklahoma.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons before 11:00 a.m. on June 10, 1996.

RETURN

I have executed this Judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this Judgment.

United States Marshal

By _____
Deputy Marshal

Defendant: KRISTI DENESHA BARNETT

Case Number: 95-CR-128-001-B

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years as to Count 1, and 3 years as to each of Counts 2 through 4, said counts to run concurrently with each other, and concurrent with Count 1.

While on supervised release, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. The defendant shall report in person to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.
2. If this judgment imposes a fine, special assessment, costs, or restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine, assessments, costs, and restitution that remain unpaid at the commencement of the term of supervised release.
3. The defendant shall not own or possess a firearm or destructive device.
4. The defendant shall successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.
5. The defendant shall be placed on home detention to include electronic monitoring at the discretion of the U. S. Probation Office for a period of 3 months, to commence within 72 hours of release from imprisonment. During this time, the defendant shall remain at place of residence except for employment and other activities approved in advance by the probation office. The defendant shall maintain a telephone at place of residence without any special services, modems, answering machines, or cordless telephones for the above period. The defendant shall wear an electronic device and shall observe the rules specified by the Probation Office.
6. The defendant shall submit to a search conducted by a United States Probation Officer of his person, residence, vehicle, office and/or business at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation. The defendant shall not reside at any location without having first advised other residents that the premises may be subject to searches pursuant to this condition. Additionally, the defendant shall obtain written verification from other residents that said residents acknowledge the existence of this condition and that their failure to cooperate could result in revocation. This acknowledgement shall be provided to the U. S. Probation Office immediately upon taking residency.
7. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF SUPERVISION

While the defendant is on supervised release pursuant to this judgment, the defendant shall not commit another federal, state, or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: KRISTI DENESHA BARNETT
Case Number: 95-CR-128-001-B

RESTITUTION AND FORFEITURE

RESTITUTION

The defendant shall make restitution in the total amount of \$3,435.89 on Count 1.

The defendant shall make restitution to the following persons in the following amounts:

<u>Name of Payee</u>	<u>Amount of Restitution</u>
Security National Bank P.O. Box 6319 Norman, OK 73070	\$2,040.89
Citizens Bank 1315 E. Taft Sapulpa, OK 74067	\$1,395.00

Payments of restitution are to be made to the United States Attorney for transfer to the payee(s).

Restitution shall be paid in full immediately. Any amount not paid immediately shall be paid while in custody through the Bureau of Prisons' Inmate Financial Responsibility Program. Upon release from custody, any unpaid balance shall be paid as a condition of supervised release.

Any payment shall be divided proportionately among the payees named unless otherwise specified here.

Defendant: KRISTI DENESHA BARNETT
Case Number: 95-CR-128-001-B

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	7
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	3 to 5 years - Ct. 1 2 to 3 years - Cts. 2,3, and 4
Fine Range:	\$ 500 to \$1,000,000
Restitution:	\$ 3,435.89

The fine is waived or is below the guideline range because of the defendant's inability to pay.

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

15-9

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY 10 1996

Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

IRENE ERWIN,

Defendant.

Case No. 96-CR-32-002-H

ENTERED ON DOCKET
DATE MAY 13 1996

ORDER OF DISMISSAL WITHOUT PREJUDICE

Upon the application of Plaintiff for Dismissal without Prejudice of defendant Irene Erwin, it is hereby ORDERED that Irene Erwin be and is hereby dismissed, without prejudice, from the above numbered case.



Sven Erik Holmes
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)

Plaintiff)

VS)

Case Number: 94-CR-011-001-C ✓

JOANIE RENEE WATKINS)

Defendant)

ENTERED ON DOCKET

DATE MAY 13 1996 1

JUDGMENT AND COMMITMENT ORDER
ON REVOCATION OF SUPERVISED RELEASE

Now on this 6th day of May, 1996, this cause comes on for revocation concerning allegations that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on March 27, 1996. The defendant is present in person and represented by counsel, Stephen Greubel. The Government is represented by Assistant U.S. Attorney Ken Snoke, and the United States Probation Office is represented by Tony Budzinsky.

The defendant was heretofore convicted on her plea of guilty to a one count Indictment charging her with Uttering a Forged Treasury Check, in violation of 18 U.S.C. § 495. She was subsequently sentenced on June 14, 1994, to three (3) years probation. The standard conditions of probation were imposed, along with special conditions that she successfully participate in a program of testing and treatment (to include inpatient) for drug and

alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer and that Watkins shall not own or possess a firearm or destructive device. The defendant shall pay to the United States a special assessment of \$50.

On February 22, 1995, Watkins' probation was revoked for failing to submit urinalysis samples as directed, submitting samples which tested positive for cocaine and marijuana, and that she failed to successfully participate in a program of drug testing and treatment as directed by the Probation Officer. The Court imposed a sentence that Watkins serve six (6) months in the custody of the U.S. Bureau of Prisons. Upon release from custody she was to begin a two (2) year term of supervised release with the standard conditions and a special condition that she successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, until such time as released from the program by the Probation Officer.

On May 6, 1996, a revocation hearing was held regarding the allegations noted in the Petition on Supervised Release, filed on March 27, 1996, said allegations that Watkins tested positive for illicit drugs and violated drug testing and treatment conditions. On May 6, 1996, Watkins stipulated to the violations, and the Court found that she had violated her conditions of supervised release as memorialized in the petition. Both the defendant and the government waived a sentencing memorandum, and the Court proceeded with sentencing.

On May 6, 1996, the Court found that the original offense of conviction occurred after November 1, 1987, and that Chapter Seven of the U. S. Sentencing Commission Guidelines is applicable. Further, the Court finds that the violations of supervised release constitute Grade C violations, in accordance with U.S.S.G. § 7B1.1(a)(3)(B), and that the defendant's original Criminal History Category of I is now applicable for determining the imprisonment range. The Court finds that Grade C violations and a Criminal History Category of I establish a revocation imprisonment range of 3-9 months, in accordance with U.S.S.G. § 7B1.4(a) and Title 18, United States Code, Section 3583(e)(3). In consideration of these findings and pursuant to U.S. v. Lee, 957 F.2d 770 (Tenth Circuit, 1992) in which the Circuit determined that the policy statements in Chapter Seven were not mandatory, but must be considered by the Court, the following is ordered:

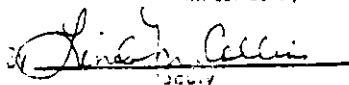
Watkins' term of supervised release is revoked and she is sentenced to a term of nine (9) months in the custody of the U.S. Bureau of Prisons. The Court recommends to the U.S. Bureau of Prisons that Watkins be placed in a facility that has an intensive drug treatment program.

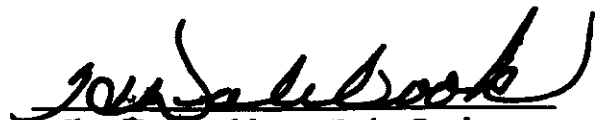
The defendant is ordered to be held by the U.S. Marshal's Service pending transfer to a designated institution.

United States District Court
Northern District of Oklahoma

I hereby certify that the foregoing
is a true copy of the original on file
in this court.

Phil Lombard, Clerk


1996


The Honorable H. Dale Cook
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

MAY 13 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA)
 Plaintiff)
 VS)
))
BETTY JOANNE COTNER)
 Defendant)

Case Number: 93-CR-037-001-C

ENTERED ON DOCKET

DATE MAY 13 1996

JUDGMENT AND COMMITMENT ORDER
ON REVOCATION OF SUPERVISED RELEASE

Now on this 7th day of May, 1996, this cause comes on for revocation concerning allegations that the defendant violated conditions of supervised release as set out in the Petition on Supervised Release filed on March 29, 1996. The defendant is present in person and represented by counsel, Martin Hart. The Government is represented by Assistant U.S. Attorney Neal Kirkpatrick, and the United States Probation Office is represented by Tony Budzinsky.

The defendant was heretofore convicted on her plea of guilty to a one count Indictment charging her with Fraudulent Use of Social Security Number, in violation of 42 U.S.C. § 408(a)(7)(B). She was committed to the custody of the U. S. Bureau of Prisons for a term of ten (10) months, followed by a three (3) year term of supervised release. In addition to the standard conditions of supervised release, special conditions including \$1,800

restitution and to successfully participate in a program of testing and treatment (to include inpatient) for drug and alcohol abuse, as directed by the Probation Officer, were also imposed. The defendant shall pay to the United States a special assessment of \$50.

On May 7, 1996, a revocation hearing was held regarding the allegations noted in the Petition on Supervised Release, filed on March 29, 1996, said allegations that Cotner committed a new law violation, and did not meet her restitution obligation. On May 7, 1996, Cotner stipulated to the violations, and the Court found that she had violated her conditions of supervised release as memorialized in the petition. Both the defendant and the government waived a sentencing memorandum, and the Court proceeded with sentencing.

On May 7, 1996, the Court found that the original offense of conviction occurred after November 1, 1987, and that Chapter Seven of the U. S. Sentencing Commission Guidelines is applicable. Further, the Court finds that the most serious violation of supervised release constitutes a Grade B violation, in accordance with U.S.S.G. § 7B1.1(a)(2), and that the defendant's original Criminal History Category of I, is now applicable for determining the imprisonment range. The Court finds that a Grade B violation and a Criminal History Category of I establish a revocation imprisonment range of 4-10 months, in accordance with U.S.S.G. § 7B1.4(a) and Title 18, United States Code, Section 3583(e)(3). In consideration of these findings and pursuant to U.S. v. Lee, 957 F.2d 770 (Tenth Circuit, 1992) in which the Circuit determined that the policy statements in Chapter Seven were not mandatory, but must be considered by the Court, the following is ordered:

Cotner's term of supervised release is revoked and she is sentenced to a term of ten (10) months in the custody of the Bureau of Prisons, to run concurrently with the sentence imposed in Washington County, Oklahoma, case number CF-95-443.



The Honorable H. Dale Cook
United States District Judge

United States District Court) SS
Northern District of Oklahoma)
I hereby certify that the foregoing
is a true copy of the original on file
in this court. Phil Lombardi, Clerk

By 
Deputy

15-9

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

IRENE ERWIN,

Defendant.


Case No. 96-CR-32-002-H

FILED
MAY 10 1996
Richard M. Lawrence, Clerk
U. S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

ENTERED ON DOCKET
DATE MAY 13 1996

ORDER OF DISMISSAL WITHOUT PREJUDICE

Upon the application of Plaintiff for Dismissal without Prejudice of defendant Irene Erwin, it is hereby ORDERED that Irene Erwin be and is hereby dismissed, without prejudice, from the above numbered case.


Sven Erik Holmes
United States District Judge

FILED

MAY - 6 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA
Plaintiff

VS

RAYMOND WAYNE FOX
Defendant

Case Number: 93-CR-175-001-B

ENTERED ON DOCKET
DATE MAY 08 1996

ORDER REVOKING SUPERVISED RELEASE

Now on this 12th day of April 1996, this cause comes on for sentencing concerning allegations that the defendant violated conditions of supervised release as set out in the Amended Petition on Supervised Release filed on March 2, 1994. The defendant is present in person and represented by counsel, Regina Stephenson. The Government is represented by Legal Intern Lee Griffith and Assistant U.S. Attorney Gordon Cecil, and the United States Probation Office is represented by Robert E. Boston.

On May 22, 1989, the defendant was heretofore convicted on his plea of guilty to a one count Indictment which charged him with Conspiracy to Manufacture, Possess with Intent to Distribute and Distribution of a Controlled Substance, Amphetamine, a Schedule II Controlled Substance, in violation of 21 U.S.C. § 846. On July 17, 1989, Fox was committed to the custody of the U. S. Bureau Prisons for a term of thirty-three months.

In addition, he was ordered to pay a \$50 Special Monetary Assessment and complete a six year term of supervised release. As a special condition of supervised release, Fox was ordered to participate in a drug and alcohol testing and treatment program. On July 5, 1991, the Court amended the conditions of supervised release as follows:

- (1) "The defendant shall be permitted to travel to England to reside with his family upon his release from the Custody of the Bureau of Prisons;
- (2) Defendant shall not return to the United States illegally; and,
- (3) Should defendant ever return to the United States, he shall contact the United States Probation Office in Sherman, Texas, within 72 hours of his return to the United States."

On July 9, 1991, Fox was released from the custody of the U.S. Bureau of Prisons to serve his term of supervised release.

On November 29, 1993, a Petition was filed alleging that Fox had violated the conditions of supervised release as follows:

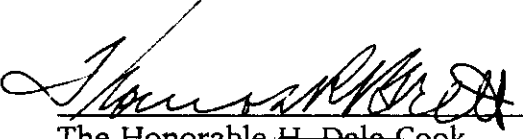
1. Violation of State of Oklahoma Law: Possession with Intent to Distribute a Schedule II Dangerous Controlled Substance.
2. Failure to report to the probation office as directed.

On March 2, 1994, an Amended Petition was filed reflecting that Fox had pleaded guilty to the above referenced State of Oklahoma Law.

On April 4, 1996, a revocation hearing was held regarding the allegations noted in the Amended Petition on Supervised Release, filed on March 2, 1994. The defendant stipulated to the violations at the hearing, and sentencing was set for April 12, 1996.

On April 12, 1996, as a result of the Sentencing Hearing, the Court found that the violations occurred after November 1, 1987, and that Chapter 7 of the U. S. Sentencing Guidelines is applicable. Further, the Court found that the violation of supervised release constituted a violation involving new criminal conduct, other than criminal conduct constituting a petty offense, and that the Court was required to revoke supervised release pursuant to Section 7A1.3 (a) of the U. S. Sentencing Guidelines Manual published October 15, 1988. Additionally, the Court found that, pursuant to 18 U. S. C. § 3583(e)(3), since the original offense of conviction was a class C felony, the defendant could not be required to serve more than two years. In consideration of these findings and pursuant to U.S. vs. Lee, 957 F2d 770 (10th Cir. 1992), in which the Circuit determined that the policy statements in Chapter 7 were not mandatory, but must be considered by the Court, the following was ordered:

The defendant shall be committed to the custody of the U. S. Bureau of Prisons for a term of twenty months with a recommendation that he be offered drug treatment.


~~The Honorable H. Dale Cook~~
United States District Judge
Thomas R. Brett

UNITED STATES DISTRICT COURT
Northern District of Oklahoma

FILED

mm MAY 3 - 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA

v.

Case Number 95-CR-158-001-BU

ALLEN DALE TUCKER
Defendant.

ENTERED ON DOCKET

DATE 5.3.96

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed On or After November 1, 1987)

The defendant, ALLEN DALE TUCKER, was represented by Richard Ravitz.

On motion of the United States the court has dismissed count(s) 1 of the Indictment.

The defendant pleaded guilty to count(s) 1 of the Information on February 1, 1996. Accordingly, the defendant is adjudged guilty of such count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Date Offense Concluded</u>	<u>Count Number(s)</u>
18 USC 1709	Embezzlement by Postal Employee	06/10/95	1

As pronounced on April 30, 1996, the defendant is sentenced as provided in pages 2 through 4 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 50.00, for count(s) 1 of the Information, which shall be due immediately.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this Judgment are fully paid.

Signed this the 2nd day of May, 1996.

Michael Burrage
The Honorable Michael Burrage
United States District Judge

United States District Court)
Northern District of Oklahoma) SS
I hereby certify that the foregoing
is a true copy of the original on file
in this court. Phil Lombardi, Clerk

Defendant's SSN: 562-41-8233

Defendant's Date of Birth: 05/22/59

Defendant's residence and mailing address: 5429 East Young Place, Tulsa, OK 74115

By *BT Miller*
Deputy

Defendant: ALLEN DALE TUCKER
Case Number: 95-CR-158-001-BU

PROBATION

The defendant is hereby placed on probation for a term of 3 year(s).

While on probation, the defendant shall not commit another federal, state, or local crime; shall not illegally possess a controlled substance; shall comply with the standard conditions that have been adopted by this court (set forth below); and shall comply with the following additional conditions:

1. If this judgment imposes a fine, special assessment, costs or restitution obligation, it shall be a condition of probation that the defendant pay any such fine, assessment, costs and restitution.
2. The defendant shall not own or possess a firearm or destructive device.
3. The defendant shall abide by the "Special Financial Conditions" enumerated in Miscellaneous Order Number M-128, filed with the Clerk of the Court on March 18, 1992.

STANDARD CONDITIONS OF PROBATION

While the defendant is on probation pursuant to this judgment, the defendant shall not commit another federal, state or local crime. In addition:

- 1) The defendant shall not leave the judicial district without the permission of the court or probation officer.
- 2) The defendant shall report to the probation officer as directed by the court or probation officer and shall submit a truthful and complete written report within the first five days of each month.
- 3) The defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer.
- 4) The defendant shall support his or her dependents and meet other family responsibilities.
- 5) The defendant shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons.
- 6) The defendant shall notify the probation officer within seventy-two hours of any change in residence or employment.
- 7) The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.
- 8) The defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered.
- 9) The defendant shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer.
- 10) The defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer.
- 11) The defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer.
- 12) The defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court.
- 13) As directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.
- 14) The defendant shall submit to urinalysis testing as directed by the U. S. Probation Office.

Defendant: ALLEN DALE TUCKER
Case Number: 95-CR-158-001-BU

FINE

The Court has determined that the defendant does not have the ability to pay interest, and it is accordingly ordered that the interest requirement is waived.

The defendant shall pay a fine of \$ 2,500.00. This fine shall be paid in full immediately. Any amount not paid immediately shall be paid during the period of probation.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. § 3614.

Defendant: ALLEN DALE TUCKER
Case Number: 95-CR-158-001-BU

STATEMENT OF REASONS

The court adopts the factual findings and guideline application in the presentence report.

Guideline Range Determined by the Court:

Total Offense Level:	6
Criminal History Category:	I
Imprisonment Range:	0 months to 6 months
Supervised Release Range:	2 to 3 years
Fine Range:	\$ 500.00 to \$ 5,000.00
Restitution:	\$ N/A

The sentence is within the guideline range, that range does not exceed 24 months, and the court finds no reason to depart from the sentence called for by application of the guidelines.

W

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

MAY - 1 1996

Phil Lombardi, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JESSE LEE WILLS,

Defendant.

No. 93-CR-133-B
(96-CV-194-B)

ORDER

This matter comes before the Court on Defendant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Defendant contends that his conviction for use of a firearm during a drug trafficking crime should be vacated because he neither used nor carried any firearm during the commission of any drug trafficking act. See Bailey v. United States, 116 S.Ct. 501 (1995). The Government agrees that there was insufficient evidence at trial to show that Defendant was in personal possession of any firearms or that he was using or carrying the same at the time of his arrest.

Accordingly, Defendant's motion to vacate, set aside, or correct sentence (docket #31) is hereby **GRANTED** and Defendant's conviction for use of a firearm during a drug trafficking crime, 18 U.S.C. § 924(c)(1), is hereby **VACATED**. The Clerk shall send a certified copy of this order to the U.S. Marshals Service.

SO ORDERED THIS 1st day of May, 1996.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE